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Court

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT LEON BUCKNER,
Plaintiff, pro se
v.
DR. ANTHONY BUSSANICH, M.D.
and
DONALD ROMINE, WARDEN,
Defendants

FILED
HARRISBURG, PA
FEB 7 2001
MARY E. DIANDREA, CLERK
Per Deputy Clerk

J. Caldwell

CIVIL CASE No. 1:CV-00-1594
(Caldwell, J.)

REPLY BRIEF OF PLAINTIFF,
OPPOSING DEFENDANT'S MOTION TO DISMISS

ROBERT LEON BUCKNER,
Plaintiff, pro se
Federal Prison Camp Lewisburg
P.O. Box 2000 - Unit K01-009L
Lewisburg, Pennsylvania 17837

Dated: February 1, 2001.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT LEON BUCKNER,
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DR. BUSSANICH, et al.,
Defendants

CIVIL No. 1:CV-00-1594
(Caldwell, J.)

* * * * * oOo * * * * *

PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS, OR, IN THE ALTERNATIVE,
PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT AND,
ISSUANCE OF EMERGENCY PRELIMINARY INJUNCTION, AND,
APPOINTMENT OF COUNSEL AND EXPERT MEDICAL WITNESS

COMES NOW, Robert Leon Buckner, Plaintiff, proceeding pro se in this action, hereby opposes the Defendant's motion to dismiss, and moves this Honorable Court to DENY such motion; to appoint counsel to represent Plaintiff; to appoint an expert medical witness; to GRANT summary judgement in favor of Plaintiff; and to make issue an emergency preliminary injunction ordering the Defendants to continue Plaintiff's medicinal regimen of Clonazepam 2mg. and Meclazine Hydrochloride 25 mg., three times a day. In support thereof, your Plaintiff states the following:

CASE HISTORY

Your Plaintiff, Robert Buckner, an Honorably Discharged and decorated Vietnam Veteran, sustained severe head injuries from a mine blast in the early 1970's. As a result, he suffers from, inter alia, 8th cranial nerve damage, severe Meniere's disease with the accompanying tinnitus, vertigo, nausea and headaches, among other symptoms, which are debilitating. He has gone through numerous trials of different medications and combinations thereof since his return to the States. These tests and trials by a number of Physicians

and other specialists in fields such as Neurology; Ear, Nose and Throat; Psychology and Psychiatry. These were carried out in several different hospitals and other offices.

As a result of these trials, the specialists determined that the best course of action was a combination of the drugs, Diazepam and Meclazine Hydrochloride. After many years of this treatment, the drug, "Clonazepam" was placed on the market. The physicians, seeing an identical therapeutic effect in cases such as Plaintiff's, yet a milder CNS "sedative" effect than most benzodiazepines. His regimen was, after a short trial with Clonazepam, then changed to Clonazepam 2 mg. and Meclizine Hydrochloride 25 mg., taken in combination, three times a day. This combination has worked to a degree that Plaintiff was able to live a prosperous, healthy, constructive life, free of the debilitating symptoms of his Meniere's disease.

In July of 1998, Plaintiff was taken into custody by Maryland State Authorities and detained at the Baltimore City Jail for, inter alia, a Grand Jury indictment for a non-violent federal offense that occurred a number of years prior. He was subsequently transferred to the Maryland Penitentiary; Anne Arundel County Jail; Maryland Super-Maximum Security Prison; and back to the Maryland Penitentiary. During this entire period, the medical staff at the various locations above, being acquainted with Buckner's medical conditions from previous incarcerations, continued his regimen of medications, which included the combination of Clonazepam and Meclizine. It was not until Plaintiff's arrival at Lewisburg that he began to have much difficulty with maintaining his proper medicinal regimen with the medical staff (Dr. Bussanich) at Lewisburg.

When Dr. Bussanich indicated that he was going to decrease Plaintiff's Clonazepam, and eventually discontinue it, Plaintiff tried in vain to explain the importance of the drug combination and what happens without it. Dr. Bussanich finally informed the Plaintiff that, if he had any documentation from the outside, he would continue the medication.

Despite the medical records subsequently received by Dr. Bussanich (See **Exhibit A**), he continued to decrease the medication.

Plaintiff attempted to resolve this problem by filing an administrative remedy ("BP-8"), which was denied. He then appealed to the Warden ("BP-9"), and was again denied. At that point, the symptoms suffered by Plaintiff were to a point that he took action in an effort to obtain an emergency preliminary injunction which would order the Defendants to continue the Clonazepam and Meclizine combination. This instant action was a result of that filing.

This action, which was filed on September 8, 2000, was dismissed without prejudice on September 28, 2000, for failure to exhaust administrative remedies. Plaintiff immediately attempted to obtain an appeal form ("BP-10") to appeal the Warden's denial. He was informed that the time had expired for an appeal and, therefore, a BP-10 was not available to him.

He subsequently asked for a BP-8 in an attempt to start the action over again. Again, Buckner was informed that a BP-8 was not available to him for such a complaint because it was "Res Judicata" by the previous filing. He then filed a Motion to vacate the court's order and reopen the case. On November 8, 2000, this case was reopened.

A motion to dismiss was purportedly filed on January 12, 2001, (Plaintiff never received), and a brief in support thereof was filed on January 29, 2001. (although without Certificate of service)

On January 25, 2001, Defendants filed a motion for leave to file a brief in excess of fifteen pages. On January 27, 2001, your Plaintiff filed a response to that motion offering his concurrence to any excess pages needed to respond to his complaint.

Plaintiff Buckner now responds to Defendant's motion to dismiss his claim for failure to exhaust remedies. 1./

QUESTION PRESENTED

"Can Buckner maintain a cause of action after he has perhaps inadvertently defaulted on his administrative remedies." (See order dated November 8, 2000, at 2.)

ARGUMENT

Plaintiff concurs in part with Defendant's construction of law as far as evaluating a motion to dismiss a complaint. Though he would add that Plaintiff, being a pro se litigant, unlearned in law, as well as a prisoner, should have his complaint and further filings in this case construed liberally and "not to stringent standards as those submitted by a lawyer." Cruz v. Beto, 405 U.S. 319 (1972). And, that his complaint "should not be dismissed for failure to state a claim unless it appear[s] **beyond doubt** that the inmate could prove no set of facts in support of his claim which would entitle him to relief," and if so "he [is] entitled to an

1./ It should be noted that the Defendants have stated that they filed a motion to dismiss on January 12, 2001. Plaintiff has not, as of yet, been supplied a copy of that motion. (see Plaintiff's response dated 1/27/01, at #2.) Furthermore, although Defendants have not included a certificate of service with brief in support of motion to dismiss, nonetheless Buckner acknowledges receipt of the brief on January 31, 2001.

opportunity to offer proof." Haines v. Kerner, 404 U.S. 519 (1972).

In this case, Plaintiff has stated a claim and is entitled to relief, and continues to suffer from the acts and omissions of the Defendants to this day. Therefore, the Defendant's motion to dismiss should be denied, summary judgement should be entered in favor of Buckner, and an emergency preliminary injunction should issue. 2./

Defendants have stated that "Buckner willfully, not "inadvertently," bypassed the administration process." (Def. Brief of Mot. to Dismiss, page 8.); That he "INTENTIONALLY FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES...." (Id. at page 5).

In support of his position, or opposition, to that claim of Defendants, Plaintiff submits an affidavit to brace his stand in that he did not "willfully" or "INTENTIONALLY" fail to exhaust his administrative remedies. That, in fact, it was the actions or inactions of the Defendants, set forth in this claim, that had such an effect on Plaintiff highly contributing to any actions or omissions by the Plaintiff in the following of his efforts to obtain relief. (See Exhibit B, Affidavit of Plaintiff Buckner).

The reasoning for this position taken by Buckner will be more fully outlined in detail hereafter in this reply to Defendant's motion to dismiss.

Defendants, in their motion to dismiss, cite Nyhuis v. Reno, 204 F.3d 65, 78 (3rd Cir. 2000); and Booth v. Churner, 206 F.3d 289

2./ Plaintiff Buckner has moved this court for an emergency injunction that would order defendants to administer the medication as it was upon his arrival at Lewisburg. He has also moved for appointment of counsel and appointment of an expert witness in this case.

(3rd Cir. 2000), cert. granted, ____ U.S. ____, 121 S.Ct. 377, (October 30, 2000)(Docket No. 99-1964), in that "no action shall be brought in federal court until such administrative remedies as are available have been exhausted." Id. (emphasis added) 3./

In fact, Circuit Judge Noonan, concurring and dissenting in Booth, stated that assaults and batteries by prison officials "are far removed from what that sponsors said was on their minds" when passing the PLRA. (See, Booth, dissent at 302). "Therefore, it concludes, §1997e(a) was not intended to encompass excessive force claims." Id. at 298, foot note 9.

This instant action can be deemed an "assault" on Buckner where Dr. Bussanich, misusing his authority by his denial of the appropriate medical treatment of Plaintiff for severe Meniere's disease, knowingly causing Plaintiff to sustain serious bodily injuries, as well as experiencing debilitating physical as well as psychological effects causing permanent damage to Plaintiff.

The Defendant Romine, Warden, had the authority to intervene by way of Plaintiff's remedy request (BP-9). Yet, he took a less efficacious route by handing the remedy over to medical staff to answer. Thus, hoping it would be safely swept under the rug and, by this action, causing manifest injustice.

3./ There should be no substantive change in the case law of Booth as would effect Plaintiff's case. The only question presented and excepted for review by the Supreme Court is: "Does 42 USC §1997e(a), which, as amended by the [PLRA], provides that prisoner must exhaust "such administrative remedies as are available" before bringing federal action, require seeking only monetary damages to exhaust...[.if...].not available under...process?" Since Buckner is also seeking emergency injunctive relief; the very reason for bringing this action to court so as to attempt to seek emergency relief by way of a preliminary injunction to immediately restart his medication regimen.

Even after being made well aware of these adverse effects caused by their actions and omissions, Defendants continue to deny Buckner the medication that would, and has been proven to, alleviate these symptoms and relieve Plaintiff from any further physical, bodily harm.

To reiterate to some extent what was briefly brought forth in Plaintiffs Motion to Reconsider Dismissal is the "availability" of a remedy to Buckner:

In Nyhuis, the third circuit "Invok[ed] Webster's definition of the word 'available' as it applies to a remedy" -- "a remedy is 'available' when it can be availed 'for accomplishment of a purpose' or 'is **accessible or may be obtained**'" -- the court held that if prisoner sought a remedy that he **could not obtain** in accessible administrative procedures, pursuant to §1997e(a), he need not avail himself to those futile procedures before bringing an action in federal court." Nyhuis, *supra.*, at 72, citing Whitley v. Hunt, 158 F.3d 882 (5th Cir. 1998), at 887, (quoting, WEBSTER'S NEW INT'L DICTIONARY 150 (3rd ed. 1981)). (emphasis in bold added).

Buckner explains, in his motion to reconsider dismissal and reopen case, that he attempted to "obtain" remedy forms from the Lewisburg Staff, who have sole control over the issuance of such forms, immediately after receipt of this court's order dismissing without prejudice. He was asked to explain the nature of his request for forms and, after being informed that the period to file such appeal of the Warden's denial, and that he could not start a new informal remedy form ("BP-8") because the issue had already been considered at that level therefore res judicata. Hence, he was denied those forms; thus, remedy was not "available" to him.

Defendants cite holdings of Muscato v. Federal Bureau of Prisons, 98 F.3d 757 (3rd Cir. 1996). More specifically, "that a prisoner's procedural default of his administrative remedies bars judicial review of [a] habeas petition unless he can show cause for the default and prejudice attributable thereto." Muscato, at 760. (emphasis added).

In that case, Phillip B. Muscato was an inmate at FPC Allenwood petitioning for habeas corpus relief, challenging constitutionality of a disciplinary hearing and the subsequent forfeiture of good-time credits. Id. at 757-59

However, in the instant case at bar, Buckner was denied his medication that, if not taken, causes him severe pain, vertigo, blindness, nausea, as well as other symptoms which, as a consequence of lack of that medication, causes him to sustain physical bodily injuries, and continue to do so to this day. Buckner's action was brought under, inter alia, a civil action; 42 USC §1983. 4./

Other side effects caused by the denial of Plaintiff's proper medication include aggressive anti-social behavior, "flashbacks" (PTSD), anxiety, and other physical, as well as psychological effects such as the feeling of "betrayal" by the government. (See Response to Informal Resolution, Governments motion to dismiss, Exhibit 1, at page 0015). Thus, because of this "impairment" caused by the decrease of medications, Buckner should not be held accountable for such errors or mistakes while in such frame of mind.

4./ Plaintiff's initial action was brought under not only "deliberate indifference" standards, but also, as an alternative, an action of medical malpractice, medical negligence, and tort. (See face of complaint)

The "cause" therefore lies in the actions (or omissions) by staff (Defendants) themselves, of which this complaint is based upon. The denial of medication is the direct cause of Plaintiff's frame of mind and inability to think totally rational during the periods of filings with Bureau of Prisons, and this court.

The "prejudice" would fall on the fact that Plaintiff would have absolutely no remedy, whether through informal, formal remedies, or this court, to cure his denial of medication and, as a result of that, would be subject to continued pain, suffering and bodily injury which would be tantamount to "assault and battery" by the Defendants. Buckner will experience his pain and suffering day by day until freed from prison, or relieved by action of this court.

Under these circumstances, it certainly could not be held that Plaintiff, with only slight rational thought process intact as a result of lack of medication, could have "intentionally" failed to exhaust his administrative remedies.

It is stated by the Defendants that, "[b]ecause the record is clear that Buckner never attempted to exhaust the **second** and **third** levels of the administrative process, he cannot show cause for default." (See, mot. to dismiss brief, at page 18.)(**emphasis added**)

Although Buckner believes he has demonstrated his "cause" and "prejudice," he nonetheless would advise the court that he indeed did complete the first and second levels in the formal manner. The first level is a "BP-8" which is also known as an "informal remedy." The second level is a "BP-9" which is the appeal to the Warden. The next levels are "BP-10" and "BP-11," the Regional Director of BOP, and the General Counsel, respectively. Although letters were later sent to both by Plaintiff (after the denial of

"BP-10" and "BP-8" to appeal Warden or restart request for remedy, and filing of motion to reconsider dismissal), of which he has received no response to as of yet.

Defendants argue that Plaintiff Buckner "was apprised of the Bureau of Prisons' Administrative Remedy Procedures for Inmates on April 5, 2000 -- within one day of his arrival at USP Lewisburg -- and again on April 26, 2000." (Exh. 1, at 7, 9.) He was therefore **fully aware of the policy.**" (See, Def. mot. to Dismiss, at page 13-14)(**emphasis added**).

They rely on their exhibits #7 and #9 which are orientation "check lists" and are merely initialed by staff to affirm the fact that new arrivals are made aware that an administrative remedy program **"exists,"** among other resources such as law library, recreational programs, etc. There is no in-depth explanation given by staff as to the particulars of such a remedy program. This is likely because staff do not want to create an individual who would file frivolous remedies, time after time, as a "recreation" and use as an avenue to "kill time." Plaintiff understands the wasted time and resources that could be diverted from more important issues because of inmates such as this. (i.e., denial of medication or other medical treatment.) Unfortunately, Bureau of Prisons has no system in place to deter filings of a frivolous nature, such as PLRA.

Again, Plaintiff would ask this Court to review his complaint and subsequent filings under a standard of liberal construction, as ruled in Cruz v. Beto, supra. and Haines v. Kerner, supra. and keep in mind the limited research materials of which are made

available to Plaintiff in this prison setting. 5./ That, in and of itself, should persuade this Court to appoint counsel at this junction, 6./ yet, it should not interfere with this Court's decision to issue an emergency, preliminary injunction to enjoin the Defendants not to further deny Plaintiff his medications, as stated herein; to wit, Clonazepam 2 mg. and Meclizine 25 mg. three times a day.

Appointment of counsel would not only be in the interest of the dispensation of fundamental fairness, but would also aid this court in the exploration of this issue of law not previously before this court.

Although the Court was rather clear, in its order reopening the case, that we're "to explore whether a prisoner can maintain a cause of action after he has perhaps **inadvertently** defaulted on his administrative remedies." (Order dated November 8, 2000, at 2.) (emphasis added); that this court had already determined the "default" was "inadvertently" made by Buckner. Id. Nevertheless, Plaintiff has attempted to reply with a substantive response herein to show "cause," "prejudice," and the fact that his failure to exhaust was not "willful" or "intentional."

Counsel, however, would be of great aid to this court, as well as Buckner, given his limited resources, and question of law at bar.

5./ The "law library" at Federal Prison Camp, Lewisburg (LEC), does not contain a full line of resources such as the Defendants are privy to. The only reporters available are volume 604 F.2d, up to most recent F.3d's. LEC inmates must fill out a request (allowing only 5 cases at a time) and include full name and page of reporter to receive a copy of F.Supp. or U.S. Reporter. Only 1 request can be submitted; you must wait to receive 1st request before making a subsequent request. It would take literally months and months to fully and properly research in order to adequately answer a comprehensive brief such as that submitted by Defendants.

6./ Because this case presents a question of law not previously before this court, Defendants filed a comprehensive brief. Plaintiff should have the same opportunity through counsel.

CONCLUSION

WHEREFORE, your Plaintiff, Robert Leon Buckner, moves this honorable Court for the following:

- 1.) DENY the Defendants' Motion to Dismiss;
- 2.) GRANT Plaintiff's Motion For Preliminary Injunctive Relief, ordering restart of his previous medications;
- 3.) GRANT Plaintiff's Motion for appointment of counsel;
- 4.) GRANT summary judgement if favor of Plaintiff;
- 5.) DENY summary judgement for Defendants;
- 6.) DENY Defendants' request "of certification that any appeal would be frivolous, lacking in probable cause, and not taken in good faith." ;
- 7.) GRANT a hearing on the merits it this case;
- 8.) GRANT any other and further relief of which this Court deems just and proper.

Respectfully submitted,



Robert Leon Buckner,

Plaintiff, pro se

Federal Prison Camp Lewisburg
P.O. Box 2000 - Unit K01-009L
Lewisburg, Pennsylvania 17837

DATE: February 1, 2001.

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT LEON BUCKNER,
Plaintiff, pro se

v.

DR. ANTHONY BUSSANICH, et al.,
Defendants

CIVIL CASE No.:

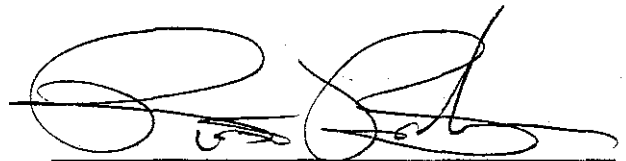
1:CV-00-1594

(Caldwell, J.)

IN RE: REPLY TO DEFENDANTS'
MOTION TO DISMISS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of January, 2001, a copy of the attached Reply to Defendants' Motion To Dismiss was mailed, postage prepaid, to: Mr. Matthew E. Haggerty, Esq., Assistant United States Attorney, 316 Federal Building, 240 West Third Street, Williamsport, Pennsylvania 17703, by placing same in a sealed envelope, addressed to the above, with affixed first-class postage, and placing same in the inmate legal-mail box at FPC-LEC, Lewisburg.



Robert Leon Buckner,
Plaintiff, pro se

Federal Prison Camp Lewisburg
P.O. Box 2000 - Unit K01-009L
Lewisburg, Pennsylvania 17837

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL CASE No. 1:CV-00-1594
(Caldwell, J.)

BUCKNER

v.

BUSSANICH, et al.

A P P E N D I X

TO THE PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS,
ETC.

lec

ROBERT LEON BUCKNER
BOP REG. No. 33001-037
FEDERAL PRISON CAMP LEWISBURG
P.O. BOX 2000 - UNIT K01-009L
LEWISBURG, PENNSYLVANIA 17837-2000

September 14, 2000

~~Dr. Janet O'Mahoney, M.D.
Mercy Hospital Office
St. Paul Street
Baltimore, Maryland 21201~~

RE: REQUEST FOR MEDICAL RECORDS

Dear Dr. O'Mahoney;

Would you please be so kind as to mail me a copy of all medical that you have pertaining to me. My last visit to you was in early July, 1998, where I was treated for a gunshot wound to the right thigh and for Meneire's Disease and PTSD.

You also have a copy of Veterans Hospital records and a copy of my Form DD-214 which I need a copy of.

Your anticipated assistance is deeply appreciated.

With my very best regards, I remain

Sincerely yours

[Signature]
Robert Leon Buckner

IDENTIFYING INFORMATION

Robert Leon Buckner

DOB: 12/20/56 ✓

SSN: 215-52-2753

LAST VISIT: Between 7/4 - 7/11/1998

LAST ADDRESS: 415 South Lehigh St. Balto. Md.

cc: File

← Patient

Sony: Copies from your Previous Request sent to Dr. Bussanich on 7-29-00.

EXH. A

PATIENT'S NAME

Robert Buckner

SHEET NO

DATE
DAY YR.

1/7/98

SUBSEQUENT VISITS AND FINDINGS

7/4/98 Grieved by a bullet in
the back of the leg

Meds: Xanax prn

Klonopin

Notable Pain

Oxycodone

also ropoche

table Phenergan

PMH:

fx at T12 gets

h/o seizures

h/o CHJ

meniere's SC.

clonimutis

vertigo

describes his

poor

facial wound

Socials in Balt only a few weeks
lives alone in East Baltimore
Texas before that originally
from Baltimore; No disability
killed from DVA. No purple
heart. 2 1/2" friendly fire
Private in Vietnam shot while
spying on an unfaithful husband

Ros: Radicular pain with either
mot.

Tetanus 3 years.

Pg: PP - 4 inches opening

small superficial wound
on post. thigh
leucyemosis

Dressed with the antibiotic cream

AP - ① Myeloid disease
OK to continue Klonopin

② Sept 29 at VAMC at Baltimore
Primary Care

COMPLETED

RECEIVED MAY 28 1997

MEDICAL RECORD		PROGRESS NOTES	
DATE/TIME 10-12-97	CLINIC ORTHOPEDIC		
VITAL SIGNS: T 98.9 P 70 R 29 B/P 140/90 WT 180 HT 5'9"			
FINGERSTICK:			
ALLERGIES: IVP DYL			
CHIEF COMPLAINT: SEVERE PAIN.			

PRESENCE OF S/O: PT. COMPLAINS OF SEVERE PAIN FROM HIS SHRAPNEL WOUNDS IN HIS LEFT UPPER RIGHT LEG WHICH OCCURED IN VIET NAM. ALSO FROM FX Juxta T-12 WHICH CAUSES A PINED NERVE THAT CAUSES SEVERE PAIN WHICH RADIATES DOWN THE RIGHT LEG TO THE FOOT.

12:55 PT HAD DEMEROL 100 mg / 50 mg IV - SAY HE FEELS BETTER.

PATIENT'S IDENTIFICATION (For typed or written entries only. Indicate date, time, initials, grade, rank, rate, hospital or medical facility)

(CONTINUE ON REVERSE SIDE)

REGISTER NO.

WARD NO.

JCKNER, ROBERT L

JCKNER, ROBERT L

2-2753 12/20/56

2-2753 12/20/56

PROGRESS NOTES

STANDARD FORM 800 (Rev. 11-77)

PRINTED BY GAUCHE

FORM 41-CPR1201-45.505

508-112

THIS IS AN IMPORTANT RECORD
IT IS YOUR RESPONSIBILITY TO SAFEGUARD IT.

1. FULL NAME ROBERT LEON		2. SEX M	3. SOCIAL SECURITY NUMBER 215 52 2733		4. DATE OF BIRTH 56 12 20
5. GRADE, RATE OR CLASS SGT		6. GRADE E-5	7. DATE OF RANK 76 5 21	8. MONTH 3	
9. SELECTIVE SERVICE NUMBER LB #NA		10. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, STATE AND ZIP CODE 24 NICHOLSON DR PASADENA MD 21122		11. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE 24 NICHOLSON DR PASADENA MD 21122	
12. TYPE OF SEPARATION DISCHARGE		13. STATION OR INSTALLATION AT WHICH EFFECTED FORT DIX, NEW JERSEY			
14. AUTHORITY AND REASON AR 635-200 CHAP 16 SPD GMM		15. EFFECTIVE DATE 76 5 27		16. MONTH 5	
17. CHARACTER OF SERVICE HONORABLE		18. TYPE OF CERTIFICATE ISSUED DD FORM 256A		19. REENLISTMENT CODE RE-2	
20. LAST DUTY ASSIGNMENT AND MAJOR COMMAND Sgt BN 1 2 BN 63 P. COMPANY		21. COMMAND TO WHICH TRANSFERRED NA			
22. TERMINAL DATE OF RESERVE / RES OBLIGATION NA		23. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City, State and ZIP Code) BALTIMORE MD 21224		24. DATE ENTERED ACTIVE DUTY THIS PERIOD 74 1 1	
25. PRIMARY SPECIALTY NUMBER AND TITLE 63B WHL VEH MECH 74/5/2		26. RELATED CIVILIAN OCCUPATION AND S.O.T. NUMBER DIESEL MECH 625 281		27. RECORD OF SERVICE	
28. SECONDARY SPECIALTY NUMBER AND TITLE 11B INF MAN		29. RELATED CIVILIAN OCCUPATION AND S.O.T. NUMBER NONE		30. NET ACTIVE SERVICE THIS PERIOD 2 5 27	
				31. PRIOR ACTIVE SERVICE 0 0 0	
				32. TOTAL ACTIVE SERVICE (YTD) 2 5 27	
				33. PRIOR INACTIVE SERVICE 0 0 11	
				34. TOTAL SERVICE (YTD) (YTD) 2 6 10	
				35. FOREIGN AND/OR SF SERVICE (YTD) 0 0 0	
36. YES <input type="checkbox"/> NO <input type="checkbox"/>		37. HIGHEST EDUCATION LEVEL SUCCESSFULLY COMPLETED (in Years) SECONDARY (HIGH SCHOOL) 12 YES 11-12 Grades COLLEGE 0 YES			
38. TIME LOST (Including Two Yrs) NONE		39. DUTY ACCRUED LEAVE PAID 62 DAYS		40. DISABILITY SEVERANCE PAY <input type="checkbox"/> NO <input type="checkbox"/> YES	
		41. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE <input type="checkbox"/> \$15,000 <input type="checkbox"/> \$50,000 <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$200,000		42. AMOUNT 520,000	
43. SEPARATION MEDALS, BADGES, COMMISSIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED EXPERT MM M10 U.S. VIETNAM SERVICE MEDAL SHARPSHOOTER M1911 REP VIETNAM CAMPAIGN MEDAL COMBAT INFANTRY BADGE AIR MEDAL (SEE 27) NATIONAL DEFENSE MEDAL					
44. ARMY COMMENDATION MEDAL (W/1 OAK LEAF CLUSTER) GOOD CONDUCT MEDAL REP VIETNAM GALLANTRY CROSS UNIT CITATION PRESIDENTIAL UNIT CITATION MERITORIOUS UNIT CITATION INDIVIDUAL REQUESTS / COPY OF THE DD FORM 214 ITEM 18F USAEUR: WHL VEH MECH 63B 8 WEEKS COMBAT INTEL ANALYST 63C 4 WEEKS TRK VEH MECH 63C 4 WEEKS					
45. MAILING ADDRESS AFTER SEPARATION (Street, RFD, City, County, State and ZIP Code) 419 S. NEWKIRK ST. BALTIMORE (IND-6) MD 21224		46. SIGNATURE OF PERSON BEING SEPARATED [Signature]			
47. OFFICIAL NAME, GRADE/RATE AND AUTHORITY NO. OFFICER E R BOLTERS CW3 USA CHIEF ENL BRANCH		48. SIGNATURE OF OFFICER [Signature]			

RECEIVED MAY 28 1997

MEDICAL RECORD

COMPLETED

CONSULTATION SHEET

TO: ORTHO PEDIC	REQUEST: Dr. Henderson	HAND DELIVERED DATE OF REQUEST: 11-12-97
REASON FOR REQUEST (Complaints and findings) I would request that you consult and possibly follow-up with Mr. Buckel due to his severe pain due to shrapnel wounds inflicted during his tour in Viet Nam. I have attempted to relieve his pain with several different analgesics over the past months but PT. does not respond. The last med I prescribed was Dolophine 10mg. Sy 1 po q 4 hrs prn and (cont)		
PROVISIONAL DIAGNOSIS Severe pain due to service connected wounds, PTSD, anxiety, panic attacks, Stress disorder menstrual syndrome		
DOCTOR'S SIGNATURE <i>Dr. Henderson</i>	APPROVED <i>Paul L. Henderson</i>	PLACE OF CONSULTATION <input type="checkbox"/> BEDSIDE <input checked="" type="checkbox"/> ON CALL
		<input type="checkbox"/> ROUTINE <input checked="" type="checkbox"/> TODAY <input type="checkbox"/> 72 HOURS <input type="checkbox"/> EMERGENCY

CONSULTATION REPORT

(Continued) and dispensed 90 tabs for a month supply. I will continue to follow with his Xanax and Klonopin.

CONSULT REPORT

AFTER REVIEWING THIS PT'S FILE and EXAMINATION, I SEE NO PROBLEM IN FOLLOWING THIS PT. FOR HIS PAIN AS WELL AS HIS PTSD, ANXIETY, PANIC ATTACKS, and STRESS DISORDER DUE TO MENSTRUATED SYNDROME. I SHOULD NOTE THAT NORMALLY I WOULD NOT PRESCRIBE SUCH AN QUANTITY OF A DRUG SUCH AS DOLOPHINE, AS WELL AS THE OTHERS INDICATED IN THIS CASE. NEVERTHELESS, AFTER MEETING AND SPEAKING WITH MR. BUCKEL AT LENGTH, HE APPEARS BE AN EXTREMELY LEVEL HEADED INDIVIDUAL WHICH I WOULD CERTAINLY TRUST AND FEEL COMFORTABLE IN FULFILLING HIS PRESCRIPTIONS FOR DOLOPHINE (AS WELL AS HIS XANAX & KLOPINOL - I SEE NO NEED TO HAVE THIS PT. COMING TO THE CLINIC TWICE A MONTH WHEN I CAN PROVIDE THE CARE NEEDED FOR ALL - ESPECIALLY SINCE THIS IS CHRONIC) OF COURSE, IF THERE IS NO DISAGREEMENT WITH DR. HENDERSON.

(Continued on reverse side)

SIGNATURE AND TITLE <i>Dr. Henderson</i>		DATE 11-12-97
IDENTIFICATION NO.	ORGANIZATION 7	REGISTER NO.
		WARD NO.

PATIENT'S IDENTIFICATION (For typed or written entries give: Name-last, first, middle; grade; rank; rate; hospital or medical facility)

CONSULTATION SHEET
STANDARD FORM 513 (Rev. 9-77)
Prescribed by GSA/ICMR
FPMR (41 CFR) 201-45.505
513-108

RECEIVED, DEPT. 1
215-52-2750 12/30/96

COMPLETED

CONTINUE ON BACK WHEN NECESSARY

RECEIVED MAY 28 1992

Department of Veterans Affairs

MEDICAL CERTIFICATE

1. DATE 1-12-91	2. TIME 1137	3. AGE 41	4. SEX <input checked="" type="checkbox"/> M <input type="checkbox"/> F	5. ON ARRIVAL PATIENT WAS <input checked="" type="checkbox"/> AMBULATORY <input type="checkbox"/> STRETCHER <input type="checkbox"/> WHEELCHAIR	6. PHONE NUMBER 440-523-3623	7. HOMELESS <input type="checkbox"/> YES <input type="checkbox"/> NO
8. ALLERGIES IUP. DYE	9. AB. WEIGHT 180	10. BC. TEMPERATURE 99.7	11. BD. PULSE 68	12. BE. RESPIRATION 30	13. BF. B/P 140/90	14. BG. DUE TO INJURY <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES

9. CURRENT MEDICATIONS

10. TRIAGE *PT Percocet 4-6, Xanax 2 mg BID, Klonopin 2 mg BID & 2 qd. PT Expressing severe pain in right upper thigh from surgical wound in Vt. done and pinched nerve from fix of T-12. Pain Radiates down RT leg (Severe Chronic Pain)*

12. HISTORY AND PHYSICAL

PT first seen in Aug. 1997 after transferring from Marion, Va. to complaints of severe pain as noted above. PT. also has history of kidney stones - 5 episodes since 1980. although states it always took a week to 10 days to pass but always passed with no difficulty.

States he has tried a number of analgesics for his pain (as shown by his records - Percocet, Demerol, Dilaudid 4 mg, Tylenol and a number of others)

Ordered Demerol 100 mg. q/50 mg Phenylen IV. for pain on 12:55 Bullen RW.

1:45 pm: Demerol seems to have "DULLED THE PAIN" as told by PT.

2:58 Ld PT back and let Pain meds take effect. Seem to be working well. Bullen RW

3:30 pm: PT COMPLAINS THAT PAIN MEDS HAVE "WORN OFF" AND HE IS (Cont.)

13. DIAGNOSTIC IMPRESSIONS

PT. Does not seem to respond to pain meds

14. PLAN

(1) PRESCRIBE DOLOPRIVE TABS 10mg - Disp #90 take T.P.O. q 6 hrs

(2) Remain on XANAX 2 mg BID, Disp #90. (SINCE THERE ARE COMPLAINTS about his Anxiety meds - They seem to work)

(3) REMAIN ON KLOPIN 2 mg. T.P.O. BID & T.T. Q.S. x sleep pm (SINCE NO COMPLAINTS ABOUT SLEEP MEDS)

15A. ATTENDING OF RECORD

C. Bullen MD.

15B. EXAMINER'S SIGNATURE

C. Bullen MD.

SECTION II - FOR PATIENT

1. DISPOSITION / CLINIC APPOINTMENT	2. AFTER CARE SHEET GIVEN <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	3. FOLLOWUP - ACTIVITY - LIMITATIONS <i>Complete - BED REST UNTIL NEXT DAY</i>
4. CONDITION <input type="checkbox"/> IMPROVED <input checked="" type="checkbox"/> SATISFACTORY <input type="checkbox"/> UNCHANGED	5. DATE / TIME OF DISCHARGE	6. SIGNATURE TO INDICATE INSTRUCTIONS GIVEN
7. PATIENT INSTRUCTIONS		
BUCKNER, ROBERT L		
2757 12/1/91		
8. CERTIFY THAT I RECEIVED AND UNDERSTAND THESE INSTRUCTIONS		9. PATIENT'S SIGNATURE

BUCKNER, ROBERT L

RECEIVED MAY 28 1997
COMPLETED

TIME	VITAL SIGNS				TIME	ORDERS	MD SIGNATURE	TIME	NURSES SIGNATURE	EFFECTIVENESS
	TEMP	PULSE	RESP	B/P						
1:00 PM	98.7	60	25	123/80						
2:00 PM	98.8	62	27	138/80						
3:00	98.9	67	29	142/90						

CONTINUATION FROM FRONT / PROGRESS NOTE IN SEVERE PAIN AGAIN. ORDERED BACK-UP OF Demoral 75 mg. 4/25 mg. phlegon IV. PT STATES PAIN WAS RELIEVED IMMEDIATELY WAS THANKFUL. PAIN SEEMS TO BE IMPROVING. I will discharge PT with prescriptions AND Follow-up appointment.

Rx

① Dolophine 10 mg. - Disp #90 Sig Tpo q 6 hrs prn

Rx ② XANAX 2 mg. Disp #90-Sig Tmt 1/2 BID

Rx ③ KLONOPIN 2 mg. - Disp #90-Sig Tpo. + 11 QHS x 1 day

Discharge w/ instructions to have complete Bx & Rec with his needs appt. Wed. Nov. 12, 1997, 3:00 pm

STUDIES REQUESTED	RESULTS
	Return appt. on Wed. Nov. 12, 1997 3 PM.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE:

BUCKNER

v.

BUSSANICH, et al.

Civil Case No. 1:CV-00-1594

(Caldwell, J.)

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PLAINTIFF'S AFFIDAVIT
IN SUPPORT OF OPPOSITION
TO DEFENDANT'S MOTION TO
DISMISS COMPLAINT,
OR, IN THE ALTERNATIVE,
PLAINTIFF'S MOTION FOR
SUMMARY JUDGEMENT

AFFIDAVIT OF PLAINTIFF

I, Robert Leon Buckner, being in sound mind and body, and having personal knowledge to the facts set forth below, state that the following facts are a true and correct account.

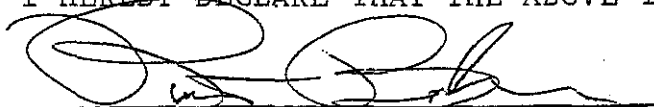
After arriving at FPC Lewisburg on April 4, 2000, I informed Dr. Bussanich, as well as other Nurses and Physician's Assistants, that I was on a regimen of medication which among other medications included Clonazepam 2 mg. taken three times daily for a severe case of 8th cranial nerve damage and Meniere's disease; that I have been on this regimen for over twenty years.

My medications followed me from the Maryland Penitentiary on 4/4/2000. Dr. Bussanich allowed the dispensing of this Clonazepam and, when the Maryland Pen prescription ran out, he refilled the order numerous times. At a point in time after my arrival at FPC Lewisburg, Dr. Bussanich informed me that he was going to wean me off of the Clonazepam. Despite my objections, and even after he received a number of medical documents from the outside that was reflective of my need for this medication, he nevertheless continued the tapering of my Clonazepam.

I then filed an administrative remedy ("BP-8") in an attempt to stop this reduction of meds. My BP-8 was denied and I appealed this to the Warden ("BP-9") and it was denied. At that point, the repercussions of the denial of this drug had such a side effect that I filed the instant action in an effort to obtain an emergency injunction. I never intentionally failed to exhaust remedies.

UNDER THE PENALTIES OF PERJURY, I HEREBY DECLARE THAT THE ABOVE IS TRUE AND CORRECT.

DATE: February 1, 2001.


Robert Leon Buckner

EXH B

ROBERT LEON BUCKNER
BOP REG. No. 33001-037
FEDERAL PRISON CAMP LEWISBURG
P.O. BOX 2000 - UNIT K01-009L
LEWISBURG, PENNSYLVANIA
17837 - 2000

February 1, 2001

Office of The Clerk
United States District Court
Middle District of Pennsylvania
United States Courthouse
228 Walnut Street
P.O. Box 983
Harrisburg, Pennsylvania 17108

RE: Buckner v. Bussanich, et al.
Case No. 1:CV-00-1594 (Caldwell, J.)

Dear Honorable Clerk:

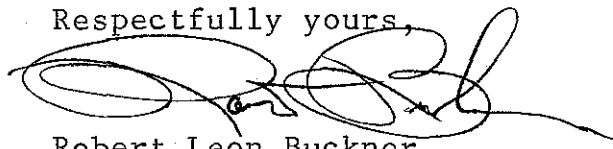
Enclosed, please find a copy of the Plaintiff's Reply Brief
Opposing Defendant's Motion To Dismiss for filing in this case.

A copy has also been mailed to Mr. Matthew Haggerty, Assistant
United States Attorney, representing the Defendants.

In addition, please note that there is a pending Motion for
Appointment of Counsel which was filed with my recent concurrence
to Defendants' Motion to Exceed Brief Limit of Fifteen Pages.

With my very best regards, I remain

Respectfully yours,

A handwritten signature in black ink, appearing to be 'Robert Leon Buckner', written over a horizontal line.

Robert Leon Buckner

cc: Matthew Haggerty (w/enclosure)
file